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In re Application of
Hoare et al.
Application No. 10/043,847
Filed: January 11, 2002
Attorney Docket No. 01-014-US

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition to revive under 37 CFR 1.137(f)/(b), filed May 20, 2003, to accept an unintentionally delayed notification of the filing in a foreign country of an application directed to the invention disclosed in the subject application.

The petition is **GRANTED**.

The present nonprovisional application became the subject of an application filed in a foreign country on January 31, 2002. However, the United States Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

Applicant filed a "Request to Rescind Previous Nonpublication Request" on February 19, 2002 (certificate of mailing under 37 CFR 1.8 dated January 31, 2002). However, the rescission request was not eligible for the benefits of 37 CFR 1.8.¹ The rescission request did not provide notice of the foreign filing. Accordingly, as the rescission was not made until after the filing of the foreign application, applicant was required by 35 U.S.C. 122(b)(2)(B)(iii) to provide notice of the foreign filing not later than forty-five days after the date the foreign application was filed to avoid abandonment of the application.²

In view of the above, this application became abandoned pursuant to 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

¹ See "Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv)", available at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/35usc122b2binterpret.htm>.

² See id.

A petition under 37 CFR 1.137(f) must be accompanied by:

- (1) the reply, which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 USC 122(b)(2)(B)(i) has been rescinded. Furthermore, the application published on September 19, 2002.

The application is being forwarded to Technology Center 2100 for examination in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 306-5589.

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